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UNITED STATES DISTRICT COURT

THE DISTRICT OF OREGON

PORTLAND DIVISION

OREGON NURSES ASSOCIATION,

Plaintiff,

v.
PROVIDENCE HEALTH & SERVICES-
OREGON

Defendant.

Case No.:

**COMPLAINT TO COMPEL
ARBITRATION**

NATURE OF THE ACTION

1. This action arises from a dispute between the Oregon Nurses Association (a labor union) and Providence Health & Services and its (the employer). The parties have agreed to final and binding arbitration in the applicable collective bargaining agreements and requested arbitration relating to the employment termination of two union members. The employer contends the grievances are not arbitrable because both terminations relate to conditions on their nursing license. The union contends

issues of arbitrability should be decided by an arbitrator. The union now seeks to compel arbitration pursuant to Section 301 of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 185(a).

PARTIES

2. Plaintiff Oregon Nurses Association ("Union" or "ONA") is a labor organization representing nurses employed by Defendant Providence Health & Services ("Employer"). As such, it is a labor organization within the meaning of 29 U.S.C. § 152(5) and §185(b) and represents employees in an industry affecting commerce within the meaning of 29 U.S.C. § 185(b). The Union's principal place of business is in Tualatin, Oregon.

3. Defendant Providence Health & Services Oregon is a multi-state, not-for-profit Catholic network of hospitals, care centers, health plans, physicians, clinics, home health care and affiliated services. Its headquarters is located in Renton, Washington.

4. Providence St. Vincent Medical Center ("Providence St. Vincent") is a regional medical center located in Portland Oregon, operated by Defendant.

5. Providence Newberg Medical Center ("Providence Newberg") is a regional medical center located in Newberg, Oregon, operated by Defendant.

6. The Union and Defendant are parties to separate collective bargaining agreements for Providence St. Vincent and Providence Newberg Medical Centers. Those agreements establish the terms and conditions of employment for nurses working at each facility.

JURISDICTION AND VENUE

7. This court has jurisdiction pursuant to 29 U.S.C. 29 U.S.C. § 185 and 28 U.S.C. § 1331.

8. Venue lies within the District of Oregon under 28 U.S.C. § 1391 as both parties transact business within this judicial district and the events underlying this

complaint occurred with this judicial district.

FACTS

9. Plaintiff and Defendant are parties to separate collective bargaining agreements at its Providence St. Vincent and Providence Newberg facilities. Those agreements establish conditions under which Defendant's employees work. Both provide a grievance and arbitration process to facilitate the peaceful adjustment of disputes. The collective bargaining agreement between ONA and Providence St. Vincent provides for binding arbitration pursuant to Article XXI, Step 4. The collective bargaining agreement between ONA and Providence Newberg provides for binding arbitration pursuant to Article 19.

10. On or about February 25, 2021, Providence Newberg terminated the employment of Mari Ady Caballero. Ms. Caballero is a member of the Oregon Nurses Association.

11. ONA grieved Cabellero's termination under the parties' collective bargaining agreement. On or about April 21, 2021, Providence Newberg denied the grievance.

12. On or about January 31, 2021, Providence St. Vincent terminated the employment of Stephanie Carrier. Ms. Carrier is a member of the Oregon Nurses Association.

13. ONA grieved Carrier's termination under the parties' collective bargaining agreement. On or about May 14, 2021, defendant Providence St. Vincent denied the grievance.

14. ONA sought to advance the grievances of both members to arbitration.

15. On or around May 6, 2021, Marianna Sorensen, an HR Manager for Providence Health and Services, sent an email stating that the hospital did not view the dispute regarding Ms. Cabellero's employment as a "grievance" subject to arbitration,

even though the hospital had terminated Ms. Cabellero.

16. On or about June 10, 2021, Defendant's counsel stated that there "is no case and nothing to arbitrate" regarding Ms. Cabellero's request to move the arbitration forward.

17. On or about September 28, 2021, ONA again requested arbitration and offered to bifurcate the arbitration to allow Defendants to raise any objections to the substantive or procedural arbitrability of the dispute. Through counsel, Defendants responded on or about September 28, 2021, stating that Defendant would not strike arbitrators for either the Carrier or Cabellero grievances.

CLAIM FOR RELIEF-BASIS FOR ORDERING ARBITRATION

18. Defendant is violating Section 301 of the LMRA, 20 U.S. C. § 185, by refusing to arbitrate the pending grievances. Under *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 US 593, 80 S Ct 1358 (1960) and its progeny, questions regarding the arbitrability of a particular dispute are resolved by the arbitrator. Accordingly, the court should issue an order compelling Defendant to arbitrate the pending grievances.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this court:

1. Assume jurisdiction of this case;
2. Order the Defendant to proceed to arbitration on the pending grievances;
3. Award Plaintiff reasonable attorneys' fees and all expenses and costs incurred in bringing this action;
4. Grant Plaintiff such other relief as may be just and proper.

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Of Attorney for Plaintiff

DECLARATION OF SERVICE

I hereby certify I served the foregoing COMPLAINT upon the following persons:

Dennis Westlind
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200 SW Market St., Suite 1900
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Dwestlind@bullardlaw.com
Attorneys for Defendants

on October 28, 2021, by the following method:

X via CM/ECF

X via the e-mail addresses outlined above.

via hand-delivery to the addresses outlined above.

via facsimile

by mailing to each of them a correct copy thereof, contained in a sealed envelope, with postage prepaid, addressed to them at their regular office addresses indicated above, and deposited in the Post Office at Portland, Oregon. Between said addresses to which said copies were mailed, there is a regular communication by U.S. Mail.

Dated this October 28, 2021.

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